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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,304	07/11/2003	Marie-Pascale Audousset	226683US26	3594

22850 7590 09/10/2007

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EXAMINER	
NGUYEN, TRI V	

ART UNIT	PAPER NUMBER
1751	

NOTIFICATION DATE	DELIVERY MODE
09/10/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/617,304	AUDOUSSET ET AL.	
	Examiner	Art Unit	
	Tri V. Nguyen	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 July 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-50* is/are pending in the application.

4a) Of the above claim(s) *20-24* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19 and 25-50* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *11 July 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of claims 1-19 and 25-50 in the reply filed on 06/25/07 is acknowledged. The traversal is on the ground(s) that the inventions are sufficiently related. This is not found persuasive because the invention of group I is directed to a method, system and program which is different from the invention of Group II directed to a database and compiling processes.

The requirement is still deemed proper and is therefore made FINAL.

Information Disclosure Statement

2. The information disclosure statement filed 07/11/03 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 102 & 103

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent,

> except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-11, 15-19, 25-28, 30, 31, 33-47 and 49-50 are rejected under 35 U.S.C. 102(b) as being anticipated or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mcfarlane et al. (US 6,330,341).

Mcfarlane et al. disclose a process of hair treatment by analyzing a hair element with a calorimeter, running an algorithm to determine the coloring agents to arrive at a desired color (abstract, col 3, line 24 to col 4, line 23; col 6, line 45 to col 8, line 4 and figs 1-5). Mcfarlane et al. disclose the database and display features (col 6, line 45 to col 8).

Claims 25-28, 30, 31, 33-47 and 49-50 describe the system and program of the method claims thus the prior art of Mcfarlane et al. as set forth above are relied upon to reject claims 25-28, 30, 31, 33-47 and 49-50.

Accordingly, the reference of Mcfarlane et al. anticipates the material limitations of the listed claims.

In the alternative that the above disclosure is insufficient to anticipate the above listed claims such as a display type, it would have nonetheless been obvious to the skilled artisan to achieve the methodology, as the reference teaches each of the claimed steps for the same utility and such modifications are recognized as being well within the purview of the skilled artisan to yield predictable results.

5. Claims 1-11, 15-19, 25-31 and 33-50 are rejected under 35 U.S.C. 102(e) as being anticipated or, in the alternative, under 35 U.S.C. 103(a) as obvious over Marapane et al. (US 2002/0010556).

Marapane et al. disclose a method for determining the dye components needed to achieve a desired hair coloration via the steps of analyzing a starting hair coloration with a calorimeter, followed by running a color matching algorithm, displaying various possible matches with hair dyes products based on a database of components (see at least parag. 32, 40, 48 and fig. 1, 10-13). Marapane et al. further disclose the feature of a networked environment (parag. 137-138).

Claims 25-34 and 35-43 describe the system and program of the method claims thus the prior art of Marapane et al. as set forth above are relied upon to reject claims 25-34 and 35-43.

Accordingly, the reference of Marapane et al. anticipates the material limitations of the listed claims.

In the alternative that the above disclosure is insufficient to anticipate the above listed claims such as a networking setup or display, it would have nonetheless been obvious to the skilled artisan to achieve the methodology, as the reference teaches each of the claimed steps for the same utility and such modifications are recognized as being well within the purview of the skilled artisan to yield predictable results.

6. Claims 1-11, 15-19, 25-28, 30, 31, 33-47 and 49-50 are rejected under 35 U.S.C. 102(e) as being anticipated or, in the alternative, under 35 U.S.C. 103(a) as obvious over Grossinger et al. (US 2004/0000015).

Grossinger et al. disclose a method for determining a dye formulation based on a targeted coloration of a hair sample analyzed by a spectrophotometer (parag. 59-62, 84 and fig. 2, 3 and 5d). Grossinger et al. disclose the feature of an algorithm in the calculations, displays and databases (parag. 59-62 and 122).

Claims 25-28, 30, 31, 33-47 and 49-50 describe the system and program of the method claims thus the prior art of Grossinger et al. as set forth above are relied upon to reject claims 25-28, 30, 31, 33-47 and 49-50.

Accordingly, the reference of Grossinger et al. anticipates the material limitations of the listed claims.

In the alternative that the above disclosure is insufficient to anticipate the above listed claims such as a display type, it would have nonetheless been obvious to the skilled artisan to achieve the methodology, as the reference teaches each of the claimed steps for the same utility and such modifications are recognized as being well within the purview of the skilled artisan to yield predictable results.

7. Claims 1-11, 15-19 and 25-50 are rejected under under 35 U.S.C. 103(a) as obvious over Ladjevardi (US 2005/0036677) in view of Bartholomew et al. (US 2003/0060925).

Ladjevardi discloses a process of hair coloring by determining a targeted hair coloration, analazying a sample of hair via a camera, performing a calculation and providing a hair dyeing formulation (parag. 18, 19, 24. 25, 28, 29, 32, 35, 36, 51 and 52). However, Ladjevardi does not explicitly disclose the displaying and networking features. In an analogous art, Bartholomew et al. disclose a process of preparing a dye recipe based on a targeted color via a calculation of database of components (parag. 39-40, 107, 108 and 119). Bartholomew et al. disclose the features of a spectrophotometer, networked computers via the Internet and displays (parag.

106-109). The claims would have been obvious because the technique for improving a particular class of devices was part of the ordinary capabilities of a person of ordinary skill in the art, in view of the teaching of the technique for improvement in other situations.

Claims 25-34 and 35-43 describe the system and program of the method claims thus the prior art of Ladjevardi in view of Bartholomew et al. as set forth above are relied upon to reject claims 25-34 and 35-43.

8. Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marapane et al., Grossinger et al., Mcfarlane et al., Marapane et al. or Ladjevardi in view of Bartholomew et al. as applied to the claims above, and further in view of Onuki et al. (US 6,702,863).

Marapane et al., Grossinger et al., Mcfarlane et al., Marapane et al. or Ladjevardi in view of Bartholomew et al. disclose the hair dying process but do not explicitly disclose the specific dye components. In an analogous art, Onuki et al. discloses that hair dyes have oxidation base, couplers and direct dyes (abstract, col 2, lines 29-31 and col 18, line 65 to col 19, line 9). Because the references teach hair dyeing compositions, the claim would have been obvious because the substitution of one known element for another would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

9. Claims 29, 32 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marapane et al. as applied to the claims above, and further in view of Saita et al. (US 6,719,565).

Grossinger et al. or Mcfarlane et al. disclose the hair dying process but do not explicitly disclose the Internet networking environment. In an analogous art, Saita et al. disclose a hair color advice system networked via the Internet. The claim would have been obvious because

the technique for improving a particular class of devices was part of the ordinary capabilities of a person of ordinary skill in the art, in view of the teaching of the technique for improvement in other situations.

10. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marapane et al. as applied to the claims above, and further in view of Saita et al. (US 6,719,565).

Marapane et al. disclose the hair dying process but do not explicitly disclose the networking environment being the Internet. In an analogous art, Saita et al. disclose a hair color advice system networked via the Internet. The claim would have been obvious because the technique for improving a particular class of devices was part of the ordinary capabilities of a person of ordinary skill in the art, in view of the teaching of the technique for improvement in other situations.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri V. Nguyen whose telephone number is (571) 272-6965. The examiner can normally be reached on M-F 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029 and Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NVT

NVT
August 31, 2007

DOUGLAS MCGINTY
SUPERVISORY PATENT EXAMINER

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